3047

SUPREME COURT OF THE UNITED STATES.

No. 182.

JOHN DARRINGTON ET AL., PLAINTIFFS IN ERROR,

vs.

THE BRANCH OF THE BANK OF THE STATE OF ALABAMA.

IN ERROR TO THE SUPREME COURT OF ALABAMA.

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Writ of Error.

THE UNITED STATES OF AMERICA:

The President of the United States, to the honorable judges of the supreme court of Alabama, greeting:

Because in the record and proceedings, and also in the rendition of judgment in a plea of debt, which is in said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had, in a certain suit, wherein the Branch of the Bank of the State of Alabama, the defendant in error, recovered against John Darrington et al., the plaintiffs in error, judgment for the sum of thirty-six hundred and ninety-five dollars and fifty-seven cents, ten per cent. damages thereon, and interest, besides the costs of the said supreme court; manifest error hath intervened to the great damage of the said Darrington et al., as we are informed, and as appears by their complaint. Now, we being willing that error, if any there be, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, that if judgment be herein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city on the first Monday in December, 1849, in the Supreme Court to be then and there held, in order that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, which if right, and according to the laws of the United States, ought and should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 7th day of July, 1849.

HENRY W. COLLIER,
Chief Justice of the Supreme Court of Alabama.

Citation.

The United States of America, to Francis S. Lyon, the commissioner and trustee of the Branch of the Bank of the State of Alabama, at Mobile, greeting:

You are hereby commanded and cited to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December, 1849, next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Alabama, wherein John Darrington et al. are the plaintiffs in error, and the Branch of the Bank of the State of Alabama are the defendants in error; to shew cause, if any there be, why the judgment rendered in the supreme court of Albama against said plaintiffs in error, as in said

writ of error mentioned, should not be corrected, and why full and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 7th day of July, 1849.

HENRY W. COLLIER,
Chief Justice of the Supreme Court of Alabama.

The State of Alabama, clerk's office of the supreme court.

JOHN DARRINGTON et al., plaintiffs in error,
vs.
BRANCH OF THE BANK of the State of Alabama, at Mobile, defendants in error.

Be it remembered, that on the twenty-third day of January, eighteen hundred and forty-nine, there was filed in the office of the clerk of the supreme court of the State of Alabama a writ of error and transcript of record in words and figures as follows, to wit:

THE STATE OF ALABAMA,
Mobile county.

Pleas before the honorable John Bragg, judge of the circuit court for the county and State aforesaid, at a term thereof begun and holden on the third Monday after the fourth Monday of March, A. D. 1848.

THE STATE OF ALABAMA,
Mobile county.

To John Darrington, Lorenzo James, and Robert D. James: Take notice, that at the next term of the circuit court, for the county of Mobile, to be held *to be held* in said county on the fourth Monday after the fourth Monday of October next, on the second Monday of the term, we, Francis S. Lyon, Clement C. Clay, and William Cooper, commissioners and trustees appointed under and by virtue of the act of the legislature of said State, entitled "an act to regulate the affairs of the banks, and provide for the payment of the State bonds," approved February 4th, 1846, will move said court for judgment and award of execution against you, for and [*on*] behalf of the Branch of the Bank of the State of Alabama, at Mobile, as the makers of a certain promissory note expressly made payable and negotiable at the said Branch Bank, which note bears date the 2nd December, 1843, at Clarke county; by which note you, as makers thereof, promised, twelve months after date, to pay the said Branch Bank, by the name and description of Henry B. Holcomb, cashier, or bearer, the sum of four thousand dollars, with interest thereon from date, for value received, which said promissory note is regularly due and unpaid, and is the property of said Bank.

F. S. LYON,
C. C. CLAY,
WILLIAM COOPER,
Commissioners and Trustees.
LESSENE & WALKER,
Bank Attorneys.

Issued 30th June, 1846. The sheriff of Clarke county will execute this notice according to law, and return the same to the assistant commissioner of the Branch Bank at Mobile, by the first day of October, 1846.

We, Francis S. Lyon, Clement C. Clay, and William Cooper, commissioners and trustees, under and by virtue of the act entitled "an act to regulate the affairs of the banks, and provide for the payment of the State bonds," approved the 4th day of February, 1846, do hereby certify, that the promissory note described in the above and foregoing notice, is really and bona fide the property of the Branch of the Bank of the State of Alabama, at Mobile. Given under our hand this 30th day of June, 1846.

C. C. CLAY,
F. S. LYON,
WM. COOPER,
Commissioners and Trustees.

By HENRY B. HOLCOMB,
Attorney.

Executed in full 12th August, 1846.

JNO. B. SAVAGE,
Sheriff Clarke county.

BRANCH OF THE BANK of the State of Alabama, at Mobile,
vs.
JOHN DARRINGTON et al.
} PLEAS.

The defendants come and say that they are not indebted as the said plaintiffs in their motion *has* declared against them, and of this they put themselves on the country. For a further plea in this behalf the defendants say, that the said supposed promissory note in the plaintiff's notice mentioned, was executed by the said defendants at the date of the same, upon the consideration of the receipt by the defendants from the State of Alabama of certain bills of credit, issued by the State of Alabama for circulation as money, under the name and by the style of the Branch of the Bank of the State of Alabama, at Mobile, by which the State of Alabama then and there undertook, under the name aforesaid, to pay the bearer of the said notes the sums therein specified on demand; which said bills of credit were in sums of five, ten, twenty, fifty, and one hundred dollars, amounting in the whole to the amount of the note described in the said plaintiff's notice, less the discount thereon at legal interest; and the said defendants aver that the promissory notes so issued by the State of Alabama aforesaid, in the name aforesaid, were designed, and intended, and fitted to circulate as money, and the sole object of the exchange of the said bills for the note aforesaid, by the said State, was to engage these defendants to put the same in circula-

tion as money, of which the plaintiff had notice at the date of said note, and this the defendants are ready to verify; whereupon they pray judgment, if the said plaintiffs should have or maintain their aforesaid action against them.

For a further plea in this behalf the said defendants say, that the said supposed promissory note in the plaintiff's notice mentioned, was made by the said defendants, and delivered to the plaintiff at the time the same bears date, at Mobile, in the county aforesaid, in trust for the State of Alabama, and the said defendants then and there received from the State of Alabama the notes and bills of the said bank, which the said State then and there authorized and directed the said bank to put in circulation, for the use, benefit, and profit of the State of Alabama as money; and the said State of Alabama reserved as profit in the said transaction an amount equal to a rate of discount at 8 per cent. per annum; and the said defendants aver, that the said bank acted as agent for the State of Alabama, and that the said State exclusively controlled its operations, and enjoyed the profits of the transaction aforesaid, and was exclusively bound for the redemption of the promissory notes so issued as aforesaid, and this the defendants are ready to verify; wherefore they pray judgment, if the said plaintiff should have or maintain the aforesaid action against them.

For a further plea in this behalf the defendants say, that the said supposed promissory note, in the notice mentioned, was given in settlement of certain notes of the said defendant, John Darrington, for the amount of the principal of the notes which were then about to fall due; and [at] the said settlement the said plaintiffs received from the said defendant Darrington additional securities, and the said plaintiffs then and there agreed with the said defendant, John Darrington, in consideration thereof, that the said plaintiff should be entitled to have, recover, and collect of the said defendants twenty per cent. of the said debt and interest, annually, until the said debt should be fully paid and discharged, and no more; and the said defendants aver, that before the suing out of the said notice, the said plaintiffs had received and collected the whole amount due and payable under the contract aforesaid, from the said defendants, amounting to the sum of four thousand dollars; and this. the defendants are ready to verify. Wherefore they pray judgments, &c., &c., &c.

For a further plea in this behalf the said defendants say, that the said supposed promissory note, in the plaintiffs' notice mentioned, was made by the defendants for the purpose of settling certain notes of the said John Darrington, held by the said bank, and then and there about to fall due, for the amount of the principal sum of the said note, to which the said Jameses were not parties.

And the said Darrington, then and there, in consideration of the settlement aforesaid, gave the note aforesaid, and stipulated with the said bank that the same should be paid in instalments of twenty per cent. per annum, and the interest thereon, and which stipulation the said bank then and there accepted, and the said stipulation became a por-

tion of the said contract; and thereby the said bank then and there agreed that the said note should be payable by instalments; and the said defendants aver, that the annual instalments and the interest aforesaid, payable under said contract, before the suing of the said notice, were paid by the said defendant for the sum of $4000; and this they are ready to verify. And so the said defendants say that the said plaintiff ought not to have or maintain the aforesaid motion against them.

JOHN DARRINGTON,
LORENZO JAMES,
ROBERT D. JAMES.
In person.

Plaintiffs take issue upon the first plea, and demur in short, by consent, to the 2d, 3d, 4th, and 5th pleas.

HOPKINS, *Attorney for plaintiff.*

And on the 22d day of May, 1848, being a day of the spring term, 1848, the following judgment was entered up, viz:

Judgment entered.

THE BRANCH OF THE BANK of the State of Alabama, at Mobile,
vs.
JOHN DARRINGTON, Lorenzo James, and Robert D. James.

This day came the parties, by their attorneys, and it appearing to the satisfaction of the court that the motion in this case was made on the day returnable, and regularly continued to this day, and the plaintiff moved the court to file the notice and certificate of the commissioners of said Branch Bank, (that the note described in said notice is really and bona fide the property of said Branch Bank,) as a part of the record in this cause, which motion was granted by the court; and the plaintiff moved the court for judgment against the defendants, which was resisted by the defendants, and the plaintiff demurred to all of the defendants' pleas, except the first plea; which demurrer was by the court sustained, and the said parties joined issue on the said first plea; thereupon came a jury, to wit, Peter Allain, and eleven others, good and lawful men, who being empannelled and sworn, well and truly to try the issue joined, say—we, the jury, find for the plaintiff, and assess the damages at thirty-six hundred and ninety-five $\frac{57}{100}$ dollars. It is therefore considered by the court that the plaintiff recover of the said defendants the said sum of thirty-six hundred and ninety-five $\frac{57}{100}$ dollars, the damages so by the jury in form aforesaid assessed, together with the costs in this behalf expended; it also being made to appear to the satisfaction of the court, that Henry B. Holcomb is the attorney of the commissioners of said bank, and that he signed said certificate as attorney of the said commissioners, and that the defendants have had thirty days' notice of this motion, and that, at the date of the note described in said notice, the said Halcomb was the cashier of the said Branch Bank.

STATE OF ALABAMA,
Mobile county.

I, Augustus Brooks, clerk of the circuit court for the county and State aforesaid, do hereby certify the foregoing to be a full and complete transcript of the proceedings had in the said entitled case as they remain of file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 13th day of February, A. D. 1849.

A. BROOKS, *Clerk.*

The bond and citation have been mislaid in this case; Judge Hopkins has the certificate of error, which was made out from the bond, and in which will be found its description. If the case is affirmed, please use the certificate to supply the omission of the bond in the record.

A. BROOKS, *Clerk.*

Supreme court, January term, 1849.

DARRINGTON AND JAMES
vs.
BRANCH BANK.

The plaintiffs come by attorney and say, that in the record and proceedings of the circuit court there is manifest error; and for special grounds of error, the plaintiffs assign that the court sustained the demurrers to the second, third, fourth, and fifth pleas, and gave judgment thereon in favor of the defendants; whereas, by the laws of the land, the judgment should have been for the defendants.

The plaintiffs aforesaid, for the errors aforesaid, pray judgment, and that the said judgment *and that the said judgment* be reversed.

CAMPBELL, *for Plaintiffs.*

And afterwards, to wit, on Thursday, the twenty-eighth day of June, eighteen hundred and forty-nine, the said cause of John Darrington, Lorenzo James, and Robert D. James, plaintiffs in error, against the Branch Bank at Mobile, defendant in error, being called for trial in the supreme court of the State of Alabama, at the capital thereof, in the city of Montgomery; present, the honorable the judges of the said court, the following proceedings and final judgment were had:

JOHN DARRINGTON et al.
vs.
The BRANCH BANK at Mobile.

This day came the said parties, by their attorneys, and thereupon the record in this cause, and the matters assigned therein as error, being argued and examined, it seems to the court that in the record and proceedings of the circuit court of Mobile there is no error. It is therefore considered that the judgment of the said court be affirmed, and that the defendant in error recover of the plaintiffs in error, and of Billups Gale, their security upon the writ of error bond, the amount of the judg-